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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,344	10/15/2003	Ivan Osorio	011738.00149	7817

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BANNER & WITCOFF, LTD.
TEN SOUTH WACKER DRIVE
SUITE 3000
CHICAGO, IL 60606

EXAMINER

ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 11/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,344

Applicant(s)

OSORIO ET AL.

Examiner

Michael C. Astorino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 11, 12 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11, 12 and 14-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

The Examiner acknowledges the responses filed by the Applicant.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 12-13, and 15-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Echauz et al. US Patent Number 6,678,548 B1.

Claim 1. A method for performing trial screening with a medical device system, the medical device system providing treatment to a patient with a nervous system disorder, the method comprising the steps of:

(a) receiving a first input relating to a location of treatment therapy delivery (element number 20, see also col. 4)

(b) receiving a second input about a set of therapy parameters that is associated with a treatment therapy; (see col. 4)

(c) administering the treatment therapy in accordance with the first and second inputs; (see col 7) and

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(d) receiving a first indication whether the treatment therapy is acceptable to the patient (first indication inherently occurs by the continued use of the device) and second indication whether to utilize the first and second inputs, wherein the criterion is selected from a group consisting of a detection frequency of the neurological event, a duration of the neurological event, an intensity of the neurological event, and an electrographic spread of the neurological event. (col. 10)

In regards to claims 2-8 and 12, and 15-21 see previous office action and response to arguments section below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 14 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Echauz et al. US Patent Number 6,678,548 B1 as applied to claim 2 above, and further in view of Greene US Patent Number 6,529,774.

In regards to claims 11, 14 and 22-23, Echauz et al. discloses everything but (iii) deleting a portion of the comparison data corresponding to a blanking interval of the treatment therapy. However, Greene a reference in an analogous art does disclose (iii) deleting a portion of the comparison data corresponding to a blanking interval of the treatment therapy. (column 7, lines 51-67; column 8, lines 1-4; column 11, lines 62-67; and column 12, lines 1-12). It would have

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been obvious to one of ordinary skill in the art at the time the invention was made to modify the probabilistic framework for predicting and detecting seizure onsets in the brain and multi-therapeutic device, specific to the brain stimulation therapy in view of the brain stimulation therapy including the blanking circuit of Greene, since Greene states the use of the blanking circuit to keep the non-responsive stimulation from interfering with detection of the brain activity, column 7, lines 51-53.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

In response to the argument applicant asserts that "receiving a first input relating to a location of treatment therapy delivery (element number 20, see also col. 4)." The examiner disagrees with the Applicant. Continued use of the device, including the signal acquisition can be considered receiving a first input relating to a location of treatment therapy delivery.

The rejection of claim 15 was essentially based on the same disclosure of the reference of claims 1-9 and 12-13. The office action stated, claims were rejected on the same basis as claims 1-9 and 12-13.

In regards to the blanking circuit features and claim 11, 14, and 22-23, the Applicant has asserted that the use of a suggestion of blanking circuit to delete data is not sufficient to reject the limitation. Greene is uses the Blanking circuit as an amplifier to reduce interference. Otherwise stated it deletes raw data from the original signal. The normal operation of such a device as it pertains to Echauz et al. would "correspond" to treatment therapy since the use of the device in Echauz et al. provides therapy to a user.

The Examiner invites the Applicant to request an interview to discuss in detail any aspect of the invention, including how to overcome the applied prior art reference.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MA
November 13, 2006


MAX F. WINDENBURG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700